

**MINUTES
PLANNING BOARD
TUESDAY, SEPTEMBER 25, 2018
7:00 PM
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Chairman David Wieser; Vice-Chairman Kerry Lamson; Members Jana Reeve, Michael Ham, Mike Foster, Natasha Edwards, and Mike Rowan; Alternate Members Larry Whitley and Scott Query; Youth Voice Matheus Sadovsky; Town Attorney Charlie Buckley; Planning and Development Director Kathi Ingrish; Senior Planner Jay Camp; Senior Administrative Specialist/Deputy Town Clerk Shana Robertson.

ABSENT: Youth Voice Peyton Gates

CALL TO ORDER

Chairman David Wieser called the meeting to order at 7:00 pm.

Mr. Wieser introduced new Alternate Member Scott Query to the Board. Mr. Query said that he was born and raised in Matthews and has worked as a general contractor and for Mecklenburg County Code Enforcement.

Mr. Wieser said that Jana Reeve asked if she might add an item to the end of the agenda. Michael Ham motioned to allow the additional agenda item. Mike Foster seconded the motion and it was unanimously approved.

APPROVAL OF THE MINUTES

Ms. Reeve motioned to approve the minutes from the August 28, 2018 Planning Board meeting as submitted. The motion was seconded by Mr. Foster and unanimously approved.

ZONING APPLICATION 2018-685 – 13112 PHILLIPS ROAD, COCHRANE PROPERTIES, R-15 TO R-VS

Senior Planner Jay Camp said that the original site plan proposed 22 lots and reviewed the updated site plan with the Board Members. Mr. Camp said that the applicant had revised the site plan to include 17 home sites with density just under three lots per acre. Mr. Camp said that other updates included the removal of the two lots from the stub street, six and eight foot side yards that would meet the R-VS requirements, the front porch setback was increased from 15 feet to 20 feet with the garages having a 20 to 25 foot setback. Mr. Camp said that these changes would need to be included in the conditional zoning notes on the site plan so that everything would be carried forward for final decision. Mr. Camp reviewed other changes including the 25 foot rear setbacks and the reconfiguration along Highway 51. Mr. Camp said that the applicant had moved the lots further away from the highway to allow more space for landscaping. Mr. Camp showed the Board where the driveway existed for the community garden that would be located across from the development on Phillips Road. Mr. Camp said that the Public Works Director did sign off on the offset placement of the proposed neighborhood street. Mr. Camp added that the proposed development was now closer in density to the average 2.5 homes per acre of Millstone Ridge that was located across Highway 51.

Mr. Ham said the Unified Development Ordinance (UDO) required a streetscape and lighting plan and asked if those were available. Mr. Camp said that they were not required for the rezoning process but would be reviewed during the subdivision permitting process. Mr. Ham asked if there were alleys proposed and Mr. Camp said there were not. Mr. Ham said that the UDO suggested that R-VS have rear load alleys and Mr. Ham said that he felt that would reduce the parking on the street.

Kerry Lamson asked if, now that the lots had been moved further from Highway 51, there were new conversations about raising the height of the berm or adding a structural buffer. Mr. Camp showed on the site plan the plan the plans to install a three foot berm along Highway 51. Matt Langston with Landworks Design Group said that since the public hearing they had shifted the lots to create more common open space and they were planning to install the largest berm that they could. Mr. Langston added that the cross section with berm was depicted at the narrowest

location and added where there was more open space they had the ability to increase the sizing of the berm. The berm would be three to five feet tall with evergreen landscaping and small maturing street trees to help screen along Highway 51.

Mr. Lamson asked if a sidewalk would be added and Mr. Langston said that staff had requested a ten foot multi use path along Highway 51 and Phillips Road and they are putting sidewalks on both sides of the neighborhood streets. Mr. Lamson asked if there was anything between the path and the street and Mr. Langston said there would be an eight foot planting strip.

Mr. Ham asked what the length of the property was against Highway 51 as the maximum allowed in R-VS was 660 feet. Mr. Langston said that was around 500 feet as each lot was around 55 feet in width. Mr. Camp said that the stub street divided up the block so it was not a dead-end street. Mr. Ham said that he did not feel it was a street as it did not go anywhere and there was no guarantee that the neighboring properties would ever develop. Mr. Ham also felt that large vehicles such as fire and garbage trucks would have a hard time backing up the street to turn around. Mr. Camp said that the Fire Chief had signed off on the street design. Mr. Camp added that with the large lots surrounding the property staff felt that stub streets were a better option for future connectivity.

Mr. Lamson asked if there were any plans for road improvements on Phillips Road and Mr. Langston said that they were continuing the ten foot multi use path, streetscaping and landscaping and were proposing a mid-block pedestrian refuge. Mr. Lamson asked about the curb and gutter on the opposite side of Phillips Road and the open drainage ditch. Mr. Lamson said that people would be crossing and would have to maneuver around the drainage ditch since the entrances did not line up. He added that it would be nice to get more improvements there to at least the length of the development and asked if that would be something that the applicant would consider. Mr. Langston said that it was reasonable for a landing area on that side but conversations would need to be had about offsite sidewalks. Mr. Lamson asked if there was a required fee-in-lieu for curb and gutter. Mr. Camp said that curb and gutter was not required on Major Thoroughfares but they would be installing it on Phillips Road. Mr. Camp referred to the new pedestrian refuge on Matthews- Mint Hill Road and the pedestrian landing pad and added that it was a similar design that was being presented. Mr. Langston said that the intersection was still a big question and they are going to be coordinating with Matthews Public Works and the NCDOT to find the safest solution for the pedestrian crossing.

Mr. Camp asked if all structures would have front porches and what was the minimum depth of those porches. Stan Hines, 5891 Tweed Court, said that the functional porches would be a minimum six feet.

Natasha Edwards asked if the porches would be extended to the width of the house to the garage doors and Mr. Hines said that they would and some porches may be larger than the six foot minimum.

Mr. Foster asked if they were elevated porches and Mr. Hines said that the homes were on slab foundations so they would be at grade. Mr. Hines added that they were planning on adding decorative railings that were not required by code.

Mr. Lamson asked for the characteristics of the homes and the community. Mr. Hines explained that the masters would be on the main level in every house with a second bedroom and a study also located on the main. All homes would be designed to accommodate a set of stairs that would go to a bonus room and bathroom with an option of adding additional bedrooms to the upper level. Mr. Hines said that the square footage would be from 1,600 to 2,300 square feet for the first floor.

Ms. Edwards asked if the size of the homes had changed with the reduction of lots and Mr. Hines said they had not changed but they would have larger lot sizes and there were more options to add options such as a larger guest bathroom downstairs. Ms. Edwards asked how reducing the lots had affected the price point of the neighborhood. Mr. Hines said that it would increase the price but they were unsure as to how much.

Mike Rowan asked if the Town was ok with the driveway for the community garden and the neighborhood street placement because he felt that it could be a safety concern. Mr. Hines said that the Public Works Director was fine with the design and added that the final design for the park and the park's driveway detail will be done in the future.

Mr. Foster asked if there was a berm planned on Phillips Road and Mr. Hines said that there were no plans for a berm there.

Mr. Lamson asked if there was a conceptual view from Highway 51. Mr. Hines reviewed the site plan rendering and said that many active adult communities did not have back yards and their proposal had large rear yards with attractive landscaping. Mr. Lamson asked if on NC51, how much of the back of the house could be seen. Mr. Hines said that the site was flat and the landscaping would do majority of the screening once matured.

Mr. Foster recommended approval for 2018-685, 13112 Phillips Road, Cochrane Properties, R-15 TO R-VS, with the conditional notes on the site plan updated with the following changes:

- The number of lots reduced to 17.
- The Flexible Design Standards request for the side yards removed. Homes will now have the required 6 feet and 8 feet side yards.
- The front porch setback increased from 15 feet to 20 feet.
- Garages shown as being set 5 feet behind the front porches.
- Lots moved further from Highway 51, allowing more space for landscaping
- The proposed street is intended to not create a conflict with the Purser Hulseley Park driveway.
- Minimum front porch Depth of 6 feet

The request has been found to be consistent with the Matthews Land Use Plan as it provided a variety of housing styles, densities and locations. It encouraged design and construction of alternative style housing and infill development, and it continued to support the development and improvement of roadways to ensure an efficient, connected roadway network. Mr. Rowan seconded the motion.

Mr. Ham said that he was not going to vote in favor of the rezoning recommendation because he said the development would have large trucks backing up on a street that residents would use for on street parking. He added that he was concerned about the safety of the residents and vehicles in the current design.

The motion to recommend approval passed six to one with Mr. Ham in opposition.

ZONING APPLICATION 2018-688 – 113 AND 119 N AMES STREET, MATTHEWS HELP CENTER, B-1 (CD) AND O (CD) TO B-1 (CD)

Since the Public Hearing, Mr. Camp said that the applicant had not submitted new plans and there were no new updates for review. Mr. Camp reviewed the site and current zoning for the Board. He said that the parcels would be recombined into one lot pending the approved rezoning.

John Carmichael with Robinson Bradshaw, 101 N Tryon Street, Suite 1900, Charlotte, NC 28246 said that the applicant was planning on moving the fence to comply with the Unified Development Ordinance.

Mr. Wieser said that two of the lots were already B-1 (CD) and clarified that the applicant was just trying to rezone the other lots to match the B-1 (CD) zoning and Mr. Camp said that was correct.

Mr. Lamson asked if the conditions would differ on any of the lots. Mr. Camp said that there were differences and Planning Director Kathi Ingrish said that the table in the agenda package gave a full explanation of the current conditions and the proposed conditions. Mr. Camp said that the request was for an up zoning from O (CD) to B-1 (CD), a more intense category, and were committed to not expanding the square footage except possibly to the storage building.

Larry Whitley asked about the driveway and Mr. Camp said that it would be paved.

Mr. Wieser asked if the proposed new storage building would change the parking requirements. Mr. Camp said that the site would still meet the minimum parking requirements but they would be losing some of the overflow parking. Mr. Camp said that the property was within the Downtown Overlay so they could use on street parking and other public parking to meet the minimum parking requirements.

Mr. Whitley said that the improvements to the circular drop off driveway should increase movability. Ms. Reeve asked if the driveway was wide enough for two cars. Mr. Carmichael said that the driveway was a one-way drive. Mr. Camp said that it could queue two to three cars but was not wide enough for the cars to pass each other.

Mr. Rowan recommended approval for Zoning Application 2018-688, 113 and 119 N Ames Street, Matthews Help Center B-1 (CD) and O (CD) to B-1 (CD). The requested zoning action, as most currently amended, has been found to be consistent with the Matthews Land Use Plan and Downtown Master Plan as these goals in the Land Use Plan continue to provide quality institutional facilities for all citizens and all needs and encourage a variety of land uses. The goal in the Downtown Master Plan states a dynamic Downtown attracts people, investment and opportunity. The Downtown area should be a source of pride for the entire community. Its continued progress as the civic, social and entertainment hub of the community should increase Matthews' appeal as place for corporations or citizens to call home. Mr. Foster seconded the motion and it passed unanimously.

DISCUSSION ON MORATORIUMS AND RELATED ISSUES

Town Attorney Charlie Buckley supplied the members of the Planning Board with Memorandums that were supplied to the Board of Commissioners during their August 17, 2018 5:30 pm meeting. The information provided included Temporary Moratoria, Conflict of Interest in Zoning Matters, and Zoning Application Decision-Making (Exhibit 1, 2, and 3 attached and made part of these minutes).

Temporary Moratoria:

Mr. Buckley said that in 2011 the General Assembly severely restricted the right to issue temporary moratoria. Mr. Buckley said an ordinance could not be adopted to declare a moratorium on any residential property. He added that it could be declared on commercial, office, industrial or other districts that do not contain residential uses, but the criteria to do that would require a complete study on why that moratorium would be reasonable and justified. Mr. Buckley said that the process would take several months and a lot of time from the Planning and Development Department. He added that because of this, effectively no more moratoriums are being declared by municipalities. Mr. Buckley said that the Board had spoken many times about moratorium with the increased requests for R-VS zoning. R-VS is a residential use and temporary moratoria can not be issued on residential properties.

Mr. Ham said that the same goal as a moratorium would be to not approve every rezoning that was submitted. Mr. Buckley said that was correct and this ruling put the burden on the Board of Commissioners and the Planning Board to make those types of decisions.

Mr. Lamson asked if the R-VS district could be removed from the UDO and Mr. Buckley said that the Board of Commissioners could change the zoning at any time by rezoning property or removing a zoning district. Mr. Buckley added that not all districts could be removed such as R-MH (Manufactured Housing).

Conflict of Interest in Zoning Matters:

Mr. Buckley said that according to State Statute 14-234, It was a crime for an official to enter into a contract for financial benefit with the Town and the contract, if approved by a Board, can be set aside and declared void by the Courts. Mr. Buckley added that zoning decisions are not contracts. Mr. Buckley said that the Town of Matthews, under Town Ordinance 30.d, read: "For zoning matters or for matters coming before the Zoning Board of Adjustment, it shall be a conflict of interest for the Mayor, any member of the Board of Commissioners, any member of the Zoning and Planning Board or any member of the Zoning Board of Adjustment, to participate in the deliberation or to vote on those matters wherein they may have a direct or indirect interest in the property subject to the proposed zoning and/or matters before the Board of Adjustment. For purposes of this section, INDIRECT INTEREST shall include an interest through an immediate family member or own property within 100 feet of the area subject to zoning, or matters before the Board of Adjustment or professionally represent a client whose property is the subject of the matter." Mr. Buckley said that if you had a conflict the members must recuse themselves. Mr. Buckley noted that if a member of the Board had worked in the past with an applicant but was not working on the current application then it would not be a conflict of interest. Mr. Buckley said that it would always be safe to disclose if the applicant is extended family.

Zoning Application Decision-Making:

Mr. Buckley said that with zoning decisions, the Board had no authority to base an approval or denial on ownership. He said that zoning may regulate the height, number of stories, and size of buildings and other structures, the lots that may be occupied, the size of yards, courts, and other open spaces, the density of population, the location and use of buildings, structures and land. He added that regulations may address other things like providing adequate light and air, the prevention of overcrowding of land, to avoid undue concentration of population, to lessen the congestion in the streets, to secure safety from fire, panic and danger and to facilitate the efficient and adequate provisions of transportation, water, sewage, schools, parks, and other public improvements. Mr. Buckley said that impact fees could not be requested. If the impact is too large the Board must make the decision to deny an application. Mr. Buckley read into record the rest of the memorandum.

Mr. Ham asked about requesting pricing information from the applicants and Mr. Buckley said that it would be allowed as affordable housing was of public interest.

Mr. Buckley said that Towns get into trouble making decisions on land use regulations that have nothing to do with the land use.

Mr. Lamson asked if a condition could be requested for the approval of an application. Mr. Buckley said that any condition would need to be agreed upon by the petitioner.

Mr. Ham asked if a requirement could be added to the UDO such as in R-VS, that 10% of the housing had to be affordable. Mr. Buckley said that may not be the right use in all areas and if the wording was added it would be required for every R-VS that was requested. Mr. Lamson asked if fee-in-lieu for affordable housing could be applied to the R-VS zoning district. Mr. Buckley said that affordable housing was not public infrastructure.

Mr. Buckley said that the Board of Commissioners have wider parameters in deciding zoning cases, but the Planning Board was making recommendations based on land use regulations such as was it consistent with the Matthews Land Use Plan. The Commissioners don't just look at the land use regulations but what was the best interest of the general health, safety and welfare for the community.

Mr. Rowan asked about the Erickson development and impact fees. Mr. Buckley said that the US Supreme Court and the State Superior Court had both declared impact fees illegal. Erickson volunteered fees to the Town that included three million for roads, one million plus land dedication for parks, \$20,000 for each of the thirteen buildings for EMS equipment, and the applicant also agreed that all staff be formally trained as EMT officers. Mr. Buckley said that there could no longer be approved conditions such as this. Mr. Buckley said that fees-in-lieu were not impact fees as it gave the developer a choice.

Ms. Ingrish asked Mr. Buckley if he could explain rational nexus to the Board. Mr. Buckley said that when conditions are decided based on land use regulations, rational nexus is the direct governmental interest as a result of the requirements. He added that if there was not a valid governmental interest there would not be a rational nexus and the request would be unconstitutional.

INFORMATION ON REVISED PROCESS FOR FILLING POSITIONS

Ms. Ingrish said that the Board of Commissioners, when filling a vacant Advisory Board position, used to do interviews of all potential applicants. The Commissioners were wishing to change that process and have asked staff board liaisons to review the interested citizens and make recommendations for a specific individual to fill the open slot to Council. Council would then interview the selected applicant that was recommended and select for the open position.

Ms. Ingrish said that Council was also looking into how to streamline meetings especially on zoning nights. Recommendations included limiting the staff reports and the applicant's presentation to ten minutes each, limiting public comment to four minutes, and reducing the number of non-zoning items that were on the agenda. Mr. Buckley said that these guidelines were not mandatory but just recommended currently.

HOUSING STUDY UPDATE

Mr. Lamson reviewed the sub-committee's second meeting on September 18, 2018. Mr. Lamson said that they had eleven members serving on the sub-committee. Members included Town staff, three members were from the Planning Board, and the remaining are residents or employed in the Town of Matthews. He said that their primary goal at that time was to accurately define what Affordable Housing meant to the Town of Matthews and to develop a housing policy, by doing a needs analysis for the Town. Mr. Buckley said that when a quorum was present, there should be minutes and notice posted about the public meeting. Mr. Lamson said that the next meeting was going to be on October 16, 2018 at 5:00 PM. Mr. Lamson reviewed the drafted goal for the Town of Matthews Housing Policy: "To promote stable, diverse, and affordable neighborhoods through policies and programs that advocate sensible growth while protecting environmental and historic resources and encouraging a range of housing options to meet the needs of all residents and employees."

PLANNING BOARD MEMBER ANOUNCMENT

Ms. Reeve said that she was involved with Disability Rights and Resources Group and will be performing in the October 23, 2018 production of Grease that will benefit that group. She said that she realized that was a scheduled Planning Board meeting but asked if the Board members would let their family and friends know of the event.

Mr. Whitley said that Mount Moriah would be doing their barbeque fundraiser on October 19 and 20, 2018 in the Fellowship Hall with proceeds going to the Child Development Center and Invited the Board to come out and enjoy a meal.

ADJOURNMENT

Mr. Ham motioned to adjourn and Ms. Reeve seconded. The motion passed unanimously and the meeting adjourned at 9:24 pm.

Respectfully submitted,



Shana Robertson
Senior Administrative Specialist/Deputy Town Clerk